

Introduced by Senator Kuehl

February 17, 2005

An act to add Section 22980.05 to, and to repeal and add Section 22974.8 of, the Business and Professions Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as introduced, Kuehl. Tobacco licensing.

The Stop Tobacco Access to Kids Enforcement (STAKE) Act prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, any person under the age of 18 years and authorizes the assessment of civil penalties for a violation of the act.

The California Cigarette and Tobacco Products Licensing Act of 2003 provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California and prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are in compliance with licensure requirements.

The act requires the board to take action against a retailer convicted of a violation of either the STAKE Act or the Penal Code, according to a schedule that includes a warning letter and training for a first conviction, fines for the 2nd and 3rd convictions within 12 months, 90-day license suspension for the 4th to the 7th convictions within 12 months, and license revocation upon the 8th conviction within 24 months. The act requires the board to notify the retailer prior to suspending or revoking a retailer's license to sell cigarette and tobacco products. The act authorizes the retailer to appeal the board's decision to suspend or revoke the retailer's license within 30 days after the notice of suspension or revocation. The act makes the board's authority to take action inoperative on or after the date of the release

of results from the survey undertaken by the State Department of Health Services to comply with the federal Public Health Service Act showing that less than 13% of youth were able to purchase cigarettes.

This bill would repeal the above provisions of the act and would instead make any conviction for a violation by a licensee of the STAKE Act or the Penal Code grounds for suspension or revocation of a license to sell cigarette and tobacco products. If the board finds that there are grounds for suspending or revoking a license, the bill would require the board to impose sanctions, including a 30-day license suspension for the first conviction within a 5-year period, a 90-day suspension for the 2nd conviction within a 5-year period, a 120-day suspension for the 3rd conviction within a 5-year period, a 365-day suspension for a 4th conviction within 5 years, and permanent revocation for a 5th conviction within 5 years. The bill would authorize any licensee whose license is suspended or revoked to petition the board for a redetermination of that suspension or revocation and would require the board, if the petition is filed within a 30-day period, to reconsider the suspension or revocation and, if the licensee has so requested in the petition, grant the licensee an oral hearing.

This bill would require a state or local law enforcement agency to notify the board of any violation over which the board has jurisdiction that involves a licensee or licensed premises, within 30 days of a final judgment. By increasing the duties of a local agency, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22974.8 of the Business and Professions
- 2 Code is repealed.

1 ~~22974.8. (a) (1) The board shall take action against a retailer,~~
2 ~~convicted of a violation of either the Stake Act (Division 8.5~~
3 ~~(commencing with Section 22950) or Section 308 of the Penal~~
4 ~~Code, according to the schedule set forth in subdivision (b).~~

5 ~~(2) Convictions of violations by a retailer at one retail location~~
6 ~~may not be accumulated against other locations of that same~~
7 ~~retailer.~~

8 ~~(3) Convictions of violations accumulated against a prior retail~~
9 ~~owner at a licensed location may not be accumulated against a~~
10 ~~new retail owner at the same retail location.~~

11 ~~(4) Prior to suspending or revoking a retailer's license to sell~~
12 ~~cigarette and tobacco products, the board shall notify the retailer.~~
13 ~~The notice shall include instructions for appealing the license~~
14 ~~suspension or revocation.~~

15 ~~(b) (1) Upon the first conviction of a violation of either the~~
16 ~~STAKE Act (Division 8.5 (commencing with Section 22950) or~~
17 ~~Section 308 of the Penal Code, the retailer shall receive a~~
18 ~~warning letter from the board that delineates the circumstances~~
19 ~~under which a retailer's license may be suspended or revoked~~
20 ~~and the amount of time the license may be suspended or revoked.~~
21 ~~The retailer and its employees shall receive training on tobacco~~
22 ~~control laws from the Department of Health Services upon a first~~
23 ~~conviction.~~

24 ~~(2) Upon the second conviction of a violation of either the~~
25 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~
26 ~~Section 308 of the Penal Code within 12 months, the retailer~~
27 ~~shall be subject to a fine of five hundred dollars (\$500).~~

28 ~~(3) Upon the third conviction of a violation of either the~~
29 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~
30 ~~Section 308 of the Penal Code within 12 months, the retailer~~
31 ~~shall be subject to a fine of one thousand dollars (\$1,000).~~

32 ~~(4) Upon the fourth to the seventh conviction of a violation of~~
33 ~~either the STAKE Act (Division 8.5 (commencing with Section~~
34 ~~22950)) or Section 308 of the Penal Code within 12 months, the~~
35 ~~board shall suspend the retailer's license to sell cigarette and~~
36 ~~tobacco products for 90 days.~~

37 ~~(5) Upon the eighth conviction of a violation of the STAKE~~
38 ~~Act (Division 8.5 (commencing with Section 22950) or Section~~
39 ~~308 of the Penal Code within 24 months, the board shall revoke~~
40 ~~the retailer's license to sell cigarette and tobacco products.~~

~~(e) The decision of the board to suspend or revoke the retailer's license may be appealed to the board within 30 days after the notice of suspension or revocation. All appeals shall be submitted in writing.~~

~~(d) The board's authority to take action against retailers, as set forth in this section, commences on the date of the release of the results from the survey undertaken by the Department of Health Services pursuant to Section 22952 of the Business and Professions Code Section 22952 to comply with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. 300x-26), and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services, showing that the youth purchase survey finds that 13 percent or more of youth were able to purchase cigarettes. The board's authority to take action under this section is inoperative on or after the date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes.~~

SEC. 2. Section 22974.8 is added to the Business and Professions Code, to read:

22974.8. (a) In addition to any other civil or criminal penalty provided by law, any conviction for a violation by a licensee of the STAKE Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code is grounds for suspension or revocation of a license to sell cigarette and tobacco products.

(b) If a conviction for a violation described in subdivision (a) is determined by the state or local law enforcement agency to have been committed by an agent of a licensee, the board shall deem this determination to be true. This board action may be appealed pursuant to subdivision (d).

(c) If the board finds that there are grounds for suspending a license, the board shall impose the following sanctions for a violation of any provision described in subdivision (a) within a five-year period by a licensee or an agent or employee of a licensee:

(1) Upon a finding by the board of a first violation, the license shall be suspended for 30 days.

(2) Upon a finding by the board of a second conviction, the license shall be suspended for 90 days.

1 (3) Upon a finding by the board of a third conviction, the
2 license shall be suspended for 120 days.

3 (4) Upon a finding by the board of a fourth conviction, the
4 license shall be suspended for 365 days.

5 (5) Upon a finding by the board of a fifth conviction, the
6 license shall be revoked permanently and the former licensee
7 shall not apply for, or be granted, a license at any time in the
8 future.

9 (d) (1) Any licensee whose license is suspended or revoked
10 under subdivision (c) may petition the board for a
11 redetermination of that suspension or revocation within 30 days
12 of service upon the licensee of notice of the suspension or
13 revocation. If a petition for redetermination is not filed within the
14 30-day period, the suspension or revocation shall become final at
15 the expiration of the 30-day period.

16 (2) Every petition for redetermination shall be in writing and
17 shall state the specific grounds upon which the petition is
18 founded. The petition may be amended to state additional
19 grounds at any time prior to the date on which the board issues its
20 order or decision upon the petition for redetermination.

21 (3) If the petition for redetermination is filed within the
22 30-day period, the board shall reconsider the suspension or
23 revocation and, if the licensee has so requested in the petition,
24 shall grant the licensee an oral hearing and shall give the licensee
25 at least 10 days notice of the time and place of the hearing. The
26 board may continue the hearing from time to time as may be
27 necessary.

28 (4) The order or decision of the board upon a petition for
29 redetermination becomes final 30 days after mailing notice of
30 that order or decision to the licensee.

31 (5) The notice required by this subdivision shall be served
32 personally or by mail. If by mail, the notice shall be placed in a
33 sealed envelope, with postage paid, addressed to the licensee at
34 the address as it appears in the records of the board. The giving
35 of notice shall be deemed complete at the time of deposit of the
36 notice in the United States Post Office, or a mailbox, subpost
37 office, substation or mail chute, or other facility regularly
38 maintained or provided by the United States Postal Service,
39 without extension of time for any reason. In lieu of mailing, a
40 notice may be served personally by delivering to the person to be

1 served, and service shall be deemed complete at the time of that
2 delivery. Personal service to a corporation may be made by
3 delivery of a notice to any person designated in the Code of Civil
4 Procedure to be served for the corporation with summons and
5 complaint in a civil action.

6 (e) Convictions of violations by a licensee at one retail
7 location may not be accumulated against other locations of that
8 same licensee.

9 (f) Convictions of violations accumulated against a prior retail
10 owner at a licensed location may not be accumulated against a
11 new retail owner at the same retail location.

12 SEC. 3. Section 22980.05 is added to the Business and
13 Professions Code, to read:

14 22980.05. (a) A state or local law enforcement agency shall
15 notify the board of any violation over which the board has
16 jurisdiction that involves a licensee or licensed premises, within
17 30 days of a final judgment.

18 (b) Notice by a state or local law enforcement agency to the
19 board shall include all of the following:

20 (1) A certified copy of the final judgment for a criminal or
21 civil case.

22 (2) The retailer's license information for the location at which
23 the violation occurred.

24 (3) If the judgment is only against an employee, the result of
25 an administrative hearing concluding that the sales clerk was an
26 agent of the retailer at the time of the violation.

27 SEC. 4. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.